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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
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16
17 **Scott Johnson**

18 Plaintiff,

19 v.

20 **Tersigni Family, LP**, a California
21 Limited Partnership

22 Defendants.

23 **Case No.**

24 **Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

25 Plaintiff Scott Johnson complains of Tersigni Family, LP, a California
26 Limited Partnership; and alleges as follows:

27
28 **PARTIES:**

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a
2 level C-5 quadriplegic. He cannot walk and also has significant manual
3 dexterity impairments. He uses a wheelchair for mobility and has a specially
4 equipped van.

5. Defendant Tersigni Family, LP owned the real property located at or
6 about 1836 Hamilton Ave, San Jose, California, upon which the business
7 "Dimensions in Health" operates, in July 2020 and September 2020.
8

1 3. Defendant Tersigni Family, LP owns the real property located at or
2 about 1836 Hamilton Ave, San Jose, California, upon which the business
3 "Dimensions in Health" operates, currently.

4 4. Plaintiff does not know the true names of Defendants, their business
5 capacities, their ownership connection to the property and business, or their
6 relative responsibilities in causing the access violations herein complained of,
7 and alleges a joint venture and common enterprise by all such Defendants.
8 Plaintiff is informed and believes that each of the Defendants herein is
9 responsible in some capacity for the events herein alleged, or is a necessary
10 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
11 the true names, capacities, connections, and responsibilities of the Defendants
12 are ascertained.

13

14 **JURISDICTION & VENUE:**

15 5. The Court has subject matter jurisdiction over the action pursuant to 28
16 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
17 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

18 6. Pursuant to supplemental jurisdiction, an attendant and related cause
19 of action, arising from the same nucleus of operative facts and arising out of
20 the same transactions, is also brought under California's Unruh Civil Rights
21 Act, which act expressly incorporates the Americans with Disabilities Act.

22 7. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
23 founded on the fact that the real property which is the subject of this action is
24 located in this district and that Plaintiff's cause of action arose in this district.

25

26 **FACTUAL ALLEGATIONS:**

27 8. Plaintiff went to Dimensions in Health in July 2020 and September
28 2020 with the intention to avail himself of its services motivated in part to

1 determine if the defendants comply with the disability access laws.

2 9. Dimensions in Health is a facility open to the public, a place of public
3 accommodation, and a business establishment.

4 10. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
5 to provide wheelchair accessible parking in conformance with the ADA
6 Standards as it relates to wheelchair users like the plaintiff.

7 11. Dimensions in Health provides parking to its customers but fails to
8 provide wheelchair accessible parking.

9 12. A problem that plaintiff encountered is that there were no van-
10 accessible parking spaces in the parking lot.

11 13. Plaintiff believes that there are other features of the parking that likely
12 fail to comply with the ADA Standards and seeks to have fully compliant
13 parking available for wheelchair users.

14 14. On information and belief the defendants currently fail to provide
15 wheelchair accessible parking.

16 15. Additionally, on the dates of the plaintiff's visits, the defendants failed
17 to provide wheelchair accessible paths of travel in conformance with the ADA
18 Standards as it relates to wheelchair users like the plaintiff.

19 16. Dimensions in Health provides paths of travel to its customers but fails
20 to provide wheelchair accessible paths of travel.

21 17. One problem that plaintiff encountered is that there are unramped steps
22 at the entrance of Dimensions in Health.

23 18. Plaintiff believes that there are other features of the paths of travel that
24 likely fail to comply with the ADA Standards and seeks to have fully compliant
25 paths of travel available for wheelchair users.

26 19. On information and belief the defendants currently fail to provide
27 wheelchair accessible paths of travel.

28 20. These barriers relate to and impact the plaintiff's disability. Plaintiff

1 personally encountered these barriers.

2 21. As a wheelchair user, the plaintiff benefits from and is entitled to use
3 wheelchair accessible facilities. By failing to provide accessible facilities, the
4 defendants denied the plaintiff full and equal access.

5 22. The failure to provide accessible facilities created difficulty and
6 discomfort for the Plaintiff.

7 23. Even though the plaintiff did not confront the barrier, the entrance door
8 hardware has a pull bar style handle. Plaintiff seeks to have this barrier
9 removed as it relates to and impacts his disability.

10 24. The defendants have failed to maintain in working and useable
11 conditions those features required to provide ready access to persons with
12 disabilities.

13 25. The barriers identified above are easily removed without much
14 difficulty or expense. They are the types of barriers identified by the
15 Department of Justice as presumably readily achievable to remove and, in fact,
16 these barriers are readily achievable to remove. Moreover, there are numerous
17 alternative accommodations that could be made to provide a greater level of
18 access if complete removal were not achievable.

19 26. Plaintiff will return to Dimensions in Health to avail himself of its
20 services and to determine compliance with the disability access laws once it is
21 represented to him that Dimensions in Health and its facilities are accessible.
22 Plaintiff is currently deterred from doing so because of his knowledge of the
23 existing barriers and his uncertainty about the existence of yet other barriers
24 on the site. If the barriers are not removed, the plaintiff will face unlawful and
25 discriminatory barriers again.

26 27. Given the obvious and blatant nature of the barriers and violations
27 alleged herein, the plaintiff alleges, on information and belief, that there are
28 other violations and barriers on the site that relate to his disability. Plaintiff will

1 amend the complaint, to provide proper notice regarding the scope of this
2 lawsuit, once he conducts a site inspection. However, please be on notice that
3 the plaintiff seeks to have all barriers related to his disability remedied. See
4 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
5 encounters one barrier at a site, he can sue to have all barriers that relate to his
6 disability removed regardless of whether he personally encountered them).

7

8 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
9 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
10 Defendants.) (42 U.S.C. section 12101, et seq.)

11 28. Plaintiff re-pleads and incorporates by reference, as if fully set forth
12 again herein, the allegations contained in all prior paragraphs of this
13 complaint.

14 29. Under the ADA, it is an act of discrimination to fail to ensure that the
15 privileges, advantages, accommodations, facilities, goods and services of any
16 place of public accommodation is offered on a full and equal basis by anyone
17 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
18 § 12182(a). Discrimination is defined, *inter alia*, as follows:

19 a. A failure to make reasonable modifications in policies, practices,
20 or procedures, when such modifications are necessary to afford
21 goods, services, facilities, privileges, advantages, or
22 accommodations to individuals with disabilities, unless the
23 accommodation would work a fundamental alteration of those
24 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

25 b. A failure to remove architectural barriers where such removal is
26 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
27 defined by reference to the ADA Standards.

28 c. A failure to make alterations in such a manner that, to the

maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

30. When a business provides parking for its customers, it must provide accessible parking.

31. Here, accessible parking has not been provided in conformance with the ADA Standards.

32. When a business provides paths of travel, it must provide accessible paths of travel.

33. Here, accessible paths of travel have not been provided in conformance with the ADA Standards.

34. When a business provides door hardware, it must provide accessible door hardware.

35. Here, accessible door hardware has not been provided in conformance with the ADA Standards.

36. The Safe Harbor provisions of the 2010 Standards are not applicable here because the conditions challenged in this lawsuit do not comply with the 1991 Standards.

37. A public accommodation must maintain in operable working condition those features of its facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

38. Here, the failure to ensure that the accessible facilities were available and ready to be used by the plaintiff is a violation of the law.

1 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL
2 RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
3 Code § 51-53.)

4 39. Plaintiff repleads and incorporates by reference, as if fully set forth
5 again herein, the allegations contained in all prior paragraphs of this
6 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
7 that persons with disabilities are entitled to full and equal accommodations,
8 advantages, facilities, privileges, or services in all business establishment of
9 every kind whatsoever within the jurisdiction of the State of California. Cal.
10 Civ. Code §51(b).

11 40. The Unruh Act provides that a violation of the ADA is a violation of the
12 Unruh Act. Cal. Civ. Code, § 51(f).

13 41. Defendants’ acts and omissions, as herein alleged, have violated the
14 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
15 rights to full and equal use of the accommodations, advantages, facilities,
16 privileges, or services offered.

17 42. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
18 discomfort or embarrassment for the plaintiff, the defendants are also each
19 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
20 (c).)

21 43. Although the plaintiff encountered frustration and difficulty by facing
22 discriminatory barriers, even manifesting itself with minor and fleeting
23 physical symptoms, the plaintiff does not value this very modest physical
24 personal injury greater than the amount of the statutory damages.

25
26 **PRAYER:**

27 Wherefore, Plaintiff prays that this Court award damages and provide
28 relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

2. Damages under the Unruh Civil Rights Act, which provides for actual damages and a statutory minimum of \$4,000 for each offense.

3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

Dated: November 26, 2020 CENTER FOR DISABILITY ACCESS

By:

[Signature]

Amanda Seabock, Esq.
Attorney for plaintiff